

To: Garvin, Shawn[garvin.shawn@epa.gov]
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Latest Developments

EPA Should Vary Monitoring Frequency For Unregulated Contaminants, GAO Says

Posted February 10, 2014, 4:04 P.M. ET

Varying monitoring frequency for some unregulated contaminants will help ensure that the data collected under the Unregulated Contaminant Monitoring Rule will accurately reflect the occurrence of contaminants, the Government Accountability Office says.

In its report, "Drinking Water: EPA Has Improved Its Unregulated Contaminant Monitoring Program, but Additional Action Is Needed," released Feb. 10, the GAO said monitoring frequency should be varied for suspected unregulated contaminants when it is not expected to accurately detect contaminants,

An example of when the rule is not expected to accurately detect contaminants would occur when water systems monitor for sporadically occurring viruses or pesticides that fluctuate seasonally, GAO said.

Unregulated contaminants are pollutants known or suspected of being in drinking water for which EPA has not established a health-based standard. Monitoring for these contaminants helps EPA decide whether there should be a standard.

EPA now requires water systems to monitor for 30 contaminants, the maximum level allowed under the Safe Drinking Water Act.

Lawsuit Charges 'Collective Dereliction' by West Virginia Agencies in Elk River Spill

Posted February 10, 2014, 3:57 P.M. ET

West Virginia agencies responsible for safeguarding public health committed "collective dereliction" of duty by failing to prevent the Elk River chemical spill, according to a lawsuit filed on behalf of affected citizens (Covenant House v. Huffman, W.Va., No. 14-0112, lawsuit filed 1/07/14).

An emergency petition filed Feb. 7 with the West Virginia Supreme Court charges the West Virginia Department of Environmental Protection and the state Department of Health and Human Resources with failing to perform their mandatory duty to protect citizens from exposure to hazardous materials.

The original action, filed by Mountain State Justice and Appalachian Mountain Advocates on behalf of two nonprofits, comes in response to the Jan. 9 spill of 4-methylcyclohexane methanol (MCHM) into the Elk River, which prompted a week-long "do not
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use” drinking water order for 300,000 people in nine counties.

[OMB Would Give Six-Month Warning of Federal Rules Under House Bill](#)

Posted February 10, 2014, 3:25 P.M. ET

A House panel will take up a bill (H.R. 2804) tomorrow to require the White House Office of Management and Budget to give at least a six-month notice before federal regulations may be proposed or finalized.

OMB would have to post a notice that the rule is coming, including any available estimates of costs and benefits, on the Internet under the bill to be marked up by the House Oversight and Government Reform Committee.

Under the All Economic Regulations are Transparent (ALERT) Act, introduced in July by Rep. George Holding (R-N.C.), federal rules could not take effect until such details have been posted by OMB on the Internet for six months.

The legislation would affect all proposed and final rules, such as the EPA's carbon dioxide standards for new and existing power plants.

[Energy Department Finalizes Efficiency Standards for Metal Halide Lamp Fixtures](#)

Posted February 10, 2014, 2:40 P.M. ET

Metal halide light fixtures commonly used to light parking lots and commercial and industrial buildings will need to be more energy-efficient under a final rule published by the Energy Department Feb. 10.

The standards, which go into effect in February 2017, will reduce carbon pollution by up to 28 million metric tons and save consumers up to \$1.1 billion on their energy bills over 30 years, according to Department of Energy estimates.

Contemporary metal halide lamp ballasts can waste about 10 percent to 30 percent of the energy they use, the Natural Resources Defense Council said in a blog post.

“The new standards address this problem by improving the required efficiency of the ballasts, based on levels that can be achieved by more efficient magnetic ballasts,” the NRDC said.

[Capito Announces Bill to Require States to Inspect Aboveground Chemical Tanks](#)

Posted February 10, 2014, 1:54 P.M. ET

Rep. Shelley Moore Capito (R-W.Va.) announced Feb. 10 that she will introduce legislation to require states to establish inspection programs for aboveground storage tanks and oversee safety of chemical storage facilities.

The bill would require inspections every three years for tanks located in source water assessment areas, and at least every five years for other tanks.

As part of this bill, a comprehensive inventory of chemical facilities would be established in each state, with first responders and utilities provided with a full index of chemical storage locations. Public water utilities would also be given access to emergency response plans and an inventory of chemicals at any nearby storage facilities.

Capito announced the legislation during a House Transportation and Infrastructure Committee hearing in West Virginia held in response to the Jan. 9 spill by Freedom Industries Inc. of the chemical, 4-methylcyclohexane methanol into the river. The spill prompted a week-long “do not use” order for the drinking water supplies of 300,000 people in nine counties.

[Con Edison to Quantify Benefits of Preparing Utilities for Climate Change](#)

Posted February 10, 2014, 1:26 P.M. ET

Con Edison will conduct an economic analysis to quantify the financial benefits of preparing its electric utilities for the impacts of climate change, a company official said Feb. 10.

Stuart Nachmias, Con Edison's vice president of energy policy and regulatory affairs, said the analysis will build on the company's \$1 billion post-Hurricane Sandy plan to fortify its utilities against future flooding and other effects of extreme weather.

events.

To help justify these expenditures on the utility side, Con Edison will consider benefits to the financial sector or the transportation sector, for example, of avoiding power outages during future storms, Nachmias said.

“There's all these other sectors where everything's interrelated, so how do we take account of the benefit in those other sectors of what we're doing?” Nachmias told Bloomberg BNA at a meeting of the National Association of Regulatory Utility Commissioners. “It's a challenge, I think, for the industry in total.”

The analysis will likely start later this year, he said.

[Mining Groups Push Court to Uphold EPA Guidance as Legally Binding](#)

Posted February 10, 2014, 1:15 P.M. ET

The National Mining Association and the states of West Virginia and Kentucky urged a federal appeals court Feb. 10 to uphold a lower court's ruling that the Environmental Protection Agency's water conductivity guidance related to coal mining waste rock serves as a legally binding regulation rather than agency recommendations.

The states, which are intervenors for NMA, and the industry group said that EPA's guidance memorandum constitutes a final agency action that, in practice, altered Clean Water Act Section 402 pollutant discharge and Section 404 dredge-and-fill permitting requirements without going through the appropriate processes.

However, the Justice Department—representing the EPA and the U.S. Army Corps of Engineers—sought to convince the U.S. Court of Appeals for the District of Columbia Circuit that the guidance was not legally binding and the states could ignore it if they chose to.

The case addresses draft guidance EPA issued in 2010 that took effect immediately. The final version was issued in 2011 and set numerical benchmarks for water conductivity.

The benchmarks for water conductivity, or the “measure of the ability of water to pass an electrical current,” would help EPA's regional offices assess whether a surface coal mine's actions in disposing of waste soil and rock would violate Clean Water Act standards when considering Section 404 permits, EPA said.

Earthjustice, which argued on behalf of the seven environmental group defendant-intervenors, said the guidance document was not a de facto rule. It simply fleshed out existing Clean Water Act regulations, finally requiring states to abide by existing law in their administration of surface coal mining permits, and did not alter existing law.

Judges Griffith, Kavanaugh and Srinivasan questioned all parties on how the guidance has played out in practice, as a binding requirement or ignorable recommendations.

[McCarthy Says EPA 'On Track' to Issue Greenhouse Gas Regulation for Existing Power Plants](#)

Posted February 10, 2014, 1:10 P.M. ET

EPA Administrator Gina McCarthy tells the Good Jobs, Green Jobs conference the agency is “on track” to issue its greenhouse gas emissions regulation for existing power plants in June 2015.

McCarthy also said the EPA would attempt to issue the regulation with “every sensitivity” to the jobs of workers that have provided sources of American energy for decades. She did not specifically mention coal.

NOTE: President Barack Obama called for the EPA to issue proposed greenhouse gas emissions regulations for existing power plants by June 2015 as one of the key components of his climate action plan.

[Klobuchar 'Aim to Pass' Senate Will Have Energy Efficiency Bill](#)

Posted February 10, 2014, 10:46 A.M. ET

Sen. Amy Klobuchar (D-Minn.) said Feb. 10 she believes energy efficiency legislation from Sens. Jeanne Shaheen (D-N.H.) and Rob Portman (R-Ohio) will be completed by the Senate.

"I'm almost sure it's going to come back and we're going to get this done," Klobuchar said at the Good Jobs, Green Jobs conference.

The bill (S. 1392) stalled in the Senate in September 2013 due to Republican opposition during a fight over what amendments would be considered on the legislation.

The measure would establish voluntary national model building codes, authorize \$350 million for measures to increase energy conservation in the federal government and boost energy efficiency in the manufacturing sector.

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